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5 Attorney for: Secured Creditor,  
6 EMC Mortgage Corporation as servicing agent for Wells Fargo Bank, National Association as  
7 Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., GreenPoint  
MTA Trust 2005-AR5, Mortgage Pass-Through Certificates, Series 2005-AR5, assigns and/or  
successors

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 In re: ) Case No. 09-32859 M  
14 )  
15 Imad N. Khater, ) Chapter 13  
16 Marilena V. Khater, )  
17 ) RS No. KMR-4843  
18 )  
18 ) **MOTION FOR RELIEF FROM**  
19 ) **AUTOMATIC STAY**  
20 )  
21 Debtors. ) Date: 02/25/2010  
22 ) Time: 9:30 a.m.  
22 ) Ctrm: 22  
23 ) Place: 235 Pine Street  
23 ) San Francisco, CA  
24 )  
24 )  
24 )

25 Wells Fargo Bank, National Association as Trustee for the Certificateholders of  
26 Structured Asset Mortgage Investments II Inc., GreenPoint MTA Trust 2005-AR5, Mortgage  
27 Pass-Through Certificates, Series 2005-AR5, assigns and/or successors in interest (“Secured  
28 Creditor” or “Movant” herein), moves this Court for an Order Terminating the Automatic Stay of  
29 11 U.S.C. § 362 as to moving party (and the Trustee under the Deed of Trust securing moving

1 party's claim) so that moving party and its Trustee may commence and continue all acts  
2 necessary to foreclose under the Deed of Trust secured by the Debtors' property, commonly  
3 known as 740 East 3rd Avenue, #107, 108, 207, 208, Mesa, AZ 85204, ("Property" herein).

4 As stated in the attached Declaration, the Debtors have failed to make 3 post-petition  
5 payments (10/09 through 12/09). Debtors have indicated that they intend to surrender this  
6 property in their Chapter 13 Plan.

7 Based on the foregoing, Secured Creditor alleges that Secured Creditor is not adequately  
8 protected. Secured Creditor is not receiving regular monthly payments, and is unfairly delayed  
9 from proceeding with the foreclosure of the subject Property. Accordingly, relief from the  
10 automatic stay should be granted to Secured Creditor pursuant to 11 U.S.C. § 362(d)(1) and (2).

11 WHEREFORE, Secured Creditor prays for judgment as follows:

- 12 1. For an Order granting relief from the automatic stay, permitting Secured Creditor to  
13 proceed with the foreclosure under Secured Creditor's Deed of Trust, and to sell the  
14 subject Property at a trustee's sale under the terms of the Deed of Trust to proceed  
15 with any and all post foreclosure sale remedies, including the unlawful detainer action  
16 or any other action necessary to obtain possession of the Property.
- 17 2. For an Order that the fourteen day stay described by Bankruptcy Rule 4001(a)(3) be  
18 waived.
- 19 3. For an Order modifying the automatic stay to protect Secured Creditor's interest, as  
20 the Court deems proper.
- 21 4. For attorneys' fees and costs incurred herein.
- 22 5. For such other relief as the Court deems proper.

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2       6. The Moving Party, at its option, may offer, provide and enter into any potential  
3       forbearance agreement, loan modification, refinance agreement or other loan  
4       workout/loss mitigation agreement as allowed by state law. The Movant may contact  
5       the Debtor via telephone or written correspondence to offer such an agreement. Any  
6       such agreement shall be non-recourse unless included in a reaffirmation agreement.

7       Dated: January 22, 2010

McCarthy & Holthus, LLP

8       By: /s/ Kelly M. Raftery

9       Kelly M. Raftery, Esq.

10       Attorneys for Secured Creditor

11       EMC Mortgage Corporation as servicing agent  
12       for Wells Fargo Bank, National Association as  
13       Trustee for the Certificateholders of Structured  
14       Asset Mortgage Investments II Inc.,  
15       GreenPoint MTA Trust 2005-AR5, Mortgage  
16       Pass-Through Certificates, Series 2005-AR5,  
17       assigns and/or successors